IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 579 OF 2003

IN

SUMM.SUIT NO. 241 OF 2003

Corporation Bank .. Plaintiff

versus

M/s Amit Woolens Ltd & 3 ors .. Defendants

...

Mr. S.N.Acharya for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 14th March 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendants.

2. Learned counsel for the plaintiff does not press the Summons for Judgment against the defendant no.2 to 4. Suit against the defendant nos. 2 to 4 is dismissed.

3. Despite service, the defendant no.1 has not filed any application for leave to defend nor has filed any affidavit in reply. In the circumstances, the plaintiff is entitled to a decree under order 37 Rule 3 (6) of the Code of Civil Procedure.

4. Learned counsel for the plaintiff hands in the original documents. The documents are taken on record and collectively marked Exhibit A.

5. I have perused the plaint and the documents. The plaintiff-bank granted temporary overdraft facility to the defendant no.1. By executing a writing dated 28th July, 2001, the defendant no.1 has acknowledged the liability for money borrowed under temporoary overdraft facility. However, the defendant no. 1 failed and neglected to make the payment despite notice of demand. In the absence of any affidavit in reply, the plaintiff is entitled to a decree.

6. The plaintiff has not produced on record any agreement to pay interest. In the circumstances, the plaintiff is not entitled to any interest prior to the date of the suit. Hence, Summons for Judgment is made absolute and suit of the plaintiff is decreed against

the defendant no.1 as follows :

" The defendant no.1 shall pay to the plaintiff a sum of Rs.71,839/- together with interest at 9 % p.a. from the date of the suit till payment and all costs of the suit. Suit is disposed of accordingly. "

D.G.KARNIK, J